Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	
BellSouth Long Distance, Inc.	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-208
Communications Act of 1934, as	)	
amended, To Provide In-Region,	)	
InterLATA Services in South Carolina	)	

REPLY COMMENTS IN OPPOSITION OF THE NATIONAL CABLE TELEVISION ASSOCIATION

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The National Cable Television Association ("NCTA"), the principal trade association of the cable television industry, hereby submits these reply comments opposing the grant of the Application of BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. ("BellSouth") to provide in-region interLATA services in South Carolina ("Application"). As we show herein, neither BellSouth nor those filing in support of its Application, have demonstrated that the Application should be granted.

Cable operators and their affiliates already offer both local exchange and competitive access services, and the cable industry is pursuing entry into the competitive local telephony marketplace through numerous state certification proceedings. While cable operators do not currently furnish wireline interLATA services, cable's expanding presence in local telephony gives the industry a vital stake in ensuring that the pro-competitive purposes of Section 271 are fully realized in both the local and long distance markets. Should BellSouth or other Bell

Operating Companies ("BOCs") be permitted to provide in-region InterLATA service without fulfilling all of the open market conditions required by Section 271, NCTA member companies and other potential competitors seeking entry into local exchange markets will be adversely affected since BOC incentives to fully open those markets to competition will be significantly reduced, if not eliminated. For these reasons, NCTA takes this opportunity to comment on the pending BellSouth Application.

INTRODUCTION AND SUMMARY

Section 271 of the Communications Act of 1934, as amended ("Act") [1] reflects Congress' fundamental policy decision that to promote competition BOCs may not provide in-region interLATA services in a particular State until both business and residential consumers have a meaningful opportunity to choose among two or more facilities-based providers of local exchange service that are competing on a level playing field. As a general matter, in assessing a BOC's Section 271 Application, the Act requires the Commission initially to focus on whether business and residential customers of local telephone service have a meaningful opportunity to choose between two or more commercially-viable and durable predominantly facilities-based local service providers -- the "Track A" approach. In the alternative, in the absence of requests for access and interconnection from such potential competitors, the Commission must determine whether the BOC has submitted, in accordance with the Act, a statement of the terms and conditions under which the BOC will offer access and interconnection to competitors -- the "Track B" approach.

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[1] 47 U.S.C. §271, added by §151 of the Telecommunications Act of 1996 ("1996 Act").

In addition, under either approach, the Commission must also determine that the BOC has satisfied the 14-point "competitive checklist," that it will provide in-region interLATA services in accordance with the rules implementing the competitive and nondiscrimination safeguards set forth in Section 272, and that grant of the application will serve the public interest. The BellSouth Application fails to satisfy any of these tests.

The record shows that BellSouth has received several qualifying requests and that a number of them were made during the 90-day "window" prior to the filing of the BellSouth Application. The insistence by BellSouth -- and the conclusion of the South Carolina Public Service Commission ("SCPSC") -- that potential competitors have not taken "reasonable steps" to provide residential and business competition (thus making BellSouth eligible to pursue a Track B application) is not a statutory requirement, and, in any event, is belied by the record evidence. The SCPSC decision is due no deference on this point or others given its virtual verbatim adoption of BellSouth's proposed findings and conclusions.

Even if it met the threshold Track B requirement (which it does not), BellSouth's Application must be denied. It does not satisfy the competitive checklist in a number of particulars, including failure to offer acceptable operational support systems, cost-based and geographically deaveraged final prices, and required reciprocal compensation for terminating calls to Internet Service Provider customers of competitive local exchange carriers ("CLECs"). BellSouth also has failed to satisfy Section 272's affiliate and non-discrimination requirements. Finally, particularly by focusing only on the effect of a grant of its Application on the long distance market, BellSouth has failed to meet its burden to show that grant of its Application will

be in the public interest.

I. BELLSOUTH MAY NOT PROCEED UNDER TRACK B

Section 271(c)(1)(A) covers the general case in which a BOC has received requests from predominantly facilities-based providers for interconnection to provide telephone exchange service to both business and residential customers. In that circumstance, the Commission, in addition to determining compliance with the competitive checklist, the non-discrimination safeguards of Section 272 and the public interest test, is also called upon to determine whether the BOC "has entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated providers of telephone exchange service."[2]

Section 271(c)(1)(B) covers the exceptional case in which a BOC does not receive qualifying requests for access and interconnection from predominantly facilities-based providers. According to the legislative history, Section 271(c)(1)(B) "is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new Section 271(c)(1)(A) has sought to enter the market."[3] BellSouth has chosen to proceed under Track B and it is the Track B test that it must satisfy if its application is to be granted.[4]

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2 47 U.S.C. §271(c)(1)(A).

3 H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 148 ("Conference Report").

4 In passing, BellSouth observes that it may satisfy the Track A requirements, but it offers no proof that it has done so. Application at 15-17. In fact, it calls upon others to provide the information a BOC has the burden of providing to show that it satisfies Track A, and asks the Commission to

Track B was inserted because, without it, if no predominantly facilities-based provider sought interconnection, a BOC could not otherwise qualify for interLATA relief. It follows that BellSouth's Track B application must be rejected if a predominantly facilities-based provider (or a combination of such providers) has in fact sought to provide business and residential telephone exchange service in South Carolina. And, the burden is on BellSouth as the moving party to show that it has not received a qualifying request.

BellSouth has failed to carry this burden. Even the applicant concedes that it may have received a qualifying request from ITC Deltacom, but argues that the request, if made, was not advanced in a timely manner. The Application rests almost entirely upon the conclusion of the SCPSC that a qualifying requesting had not been submitted. But the SCPSC's conclusion notwithstanding, the record demonstrates that BellSouth has, in fact, received qualifying requests.

A. Since BellSouth Has Received Qualifying Requests Under Track A, It May Not Proceed Under Track B

The resolution of this proceeding turns on the answer to a simple factual threshold question: Has BellSouth received a "qualifying request" (or a combination of such requests) to provide predominantly facilities-based access and interconnection to business and residential customers in South Carolina that complies with the requirements of Section 271? The record shows that BellSouth has received qualifying requests, and it further shows that even BellSouth

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(..continued)

"get to the bottom of the matter." Id. at 16. Needless to say, it is not the responsibility of the Commission or other parties to make BellSouth's §271 case. It chose to proceed under Track B in its pending Application and it must live with the consequences of that choice.

is unable to state unequivocally that it has not received qualifying requests. In these circumstances, the application must be denied.

BellSouth bears the burden of demonstrating that its application satisfies the requirements of Section 271. Interpreting Section 271, the Commission has found that "[b]ecause Congress required the Commission affirmatively to find that a BOC application has satisfied the statutory criteria, the ultimate burden of proof with respect to factual issues remains at all times with the BOC, even if no party opposes the BOC's application."[5] As part of the required showing under Track B, a BOC must demonstrate that it has not received a "qualifying request" to provide access and interconnection. Whether a BOC has received a "qualifying request" under Section 271 is a "highly fact-specific" determination.[6]

The Commission has previously determined that a qualifying request "is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of [the Act]."[7] With two limited exceptions, upon receipt of a qualifying request, a BOC is precluded from proceeding under Track B.[8] A "qualifying request" may come from "a

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5 Application of Ameritech Michigan Pursuant to §271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan," FCC 97-298, Aug. 19, 1997, at ¶43. ("Ameritech-Michigan").

6 SBC Communications, Inc., 8 C.R. 198, 218 (1997) ("SBC-Oklahoma").

7 Id. at 207.

8 Id. The limited exceptions arise where the BOC has received an otherwise qualifying request but the state certifies that the providers that have made the requests have either (1) failed to negotiate in good faith or (2) failed to comply, within a reasonable time, with the implementation schedule set forth in the interconnection agreements. 47 U.S.C. §271(c)(1)(B)(i). Neither exception is applicable here because neither BellSouth nor the SCPSC have represented that potential providers have failed to negotiate in good faith or that they have failed to comply with implementation schedules included in their interconnection agreements. Indeed, the record reflects that neither BellSouth nor the SCPSC have represented that there are implementation

prospective competing provider of . . . access and interconnection,"[9] not only an operational competing provider of service. But just any request will not satisfy the statutory requirement. Rather, ". . . a 'qualifying request' must be one for access and interconnection to provide the type of telephone exchange service to residential and business subscribers described in Section 271(c)(1)(A)."[10]

The record shows that BellSouth has not carried its burden to demonstrate in its Application that "none of the requests that it has received will lead to the type of telephone exchange service described in [the statute]."[11] In fact, the record indicates just the opposite.

Several potential competitive local exchange carriers have told the Commission that they have made qualifying requests for access and interconnection satisfying the requirements of Track A. For example, AT&T states that in early March 1996 it filed a request to provide access and interconnection throughout South Carolina. This request was followed later that month "with requests that confirmed and amplified AT&T's intention to serve residential and business customers"[12] throughout BellSouth's region. AT&T states that on June 10, 1996 it presented "BellSouth with written confirmation of its request for access and interconnection specific to

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(..continued)
schedules included in the interconnection agreements BellSouth has entered. See MCI Comments at 7.

9 SBC-Oklahoma, 8 C.R. at 208.

10 Id. at 216.

11 Id. at 218.

12 AT&T Comments at 50.

South Carolina."[13] In further discussions, "AT&T sought to have the ability to provide service via combinations of UNEs in place by November, 1996."[14] BellSouth's refusal to provide access and interconnection arrangements, not AT&T's disinclination to submit a qualifying request, explains AT&T's absence from local markets in South Carolina.

Similarly, American Communications Services, Inc. ("ACSI") has also sought access and interconnection from BellSouth in South Carolina. ACSI's comments describe its plans to employ a Lucent 5ESS switch and associated equipment that will be installed in Greenville, South Carolina in the first quarter of 1998 to provide predominantly facilities-based services to Greenville, and to other South Carolina cities by back-hauling traffic to Greenville.[15] According to ACSI, the company

> will offer local switched services primarily to business customers in South Carolina. However, as it has done elsewhere in BellSouth's territory, ACSI will welcome profitable opportunities to provide service to MDU and STS locations which may include residential customers. In addition, ACSI is interested in offering its switched facilities-based local services on a wider scale to residential customers in South Carolina when an economic ULL [unbundled local loop] pricing structure is available.[16]

ACSI goes on to explain that it would be providing these services now but for the unwarranted pricing structure enforced by BellSouth for the provision of unbundled local loops.[17]

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13 Id., citing Carol Ave. at ¶15.

14 Id., citing Carol Ave. at ¶¶16-17.

15 Opposition of ACSI at 4.

16 Id. at 4-5.

17 Id. at 5.

The comments of the Association for Local Telecommunications Services ("ALTS") provide evidence that ITC DeltaCom is still another company that has submitted a qualifying request for access and interconnection. ITC DeltaCom has been certified by the South Carolina PSC to offer business and residential services, it has entered into a collocation agreement with BellSouth to provide these services, it has publicly announced an intention to provide service throughout its service area which includes South Carolina, and it has a tariff on file with the SCPSC to offer business and residential service in the state.[18]

In addition to these unrebutted representations in the record in this proceeding, BellSouth itself concedes that the record on the absence of qualifying requests is not conclusive. It states that "[i]t is even possible that CLEC(s) in South Carolina have begun to offer facilities-based service to residential as well as business subscribers in South Carolina, perhaps in an effort somehow to stop BellSouth's entry into long distance."[19] In so doing, BellSouth there and elsewhere suggests that it does not know whether it is facing residential competition, and claims that information held by its competitors may demonstrate that it satisfies Track A as well as Track B.[20] In the context of these concessions, BellSouth makes the plea that the Commission should "get to the bottom of the matter."[21]

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18 ALTS Comments at 7.

19 Application at 15.

20 Id. at 16.

21 Id.

What BellSouth ignores is that it bears the burden of proof on the elements of its application, particularly on whether it is eligible to proceed under Track B. That burden is not the responsibility of the Commission nor other commenters in this proceeding. As the Commission said in SBC-Oklahoma, "[w]e expect that if a BOC seeks to proceed under Track B, ... it will submit all relevant information reasonably within its control concerning each request for access and interconnection that it has received."[22]

BellSouth cannot, of course, qualify under both tracks. If it qualifies under Track A, it is foreclosed from applying under Track B because Track B is available only in those limited circumstances in which a BOC has not received a Track A qualifying request. It simply cannot argue both that it qualifies under Track B because it has not received a qualifying request for access and interconnection, and it qualifies under Track A because it is facing residential and business competition from a predominantly facilities-based competitor. In fact, because it has applied under Track B it is against the elements of Track B that its application must be measured. As detailed above, in that regard its application must be found wanting.

B. BellSouth Has Resisted Making Access and Interconnection Arrangements Available

BellSouth claims it has not received qualifying requests (and therefore is entitled to proceed under Track B) but it refuses to acknowledge the obstacles it has placed in the path of its potential competitors who desire to make such requests. Moreover it asserts that to the extent there have been qualifying requests made, they came too late to be considered in the context of BellSouth's application, i.e., later than the statutory 90-day window prior to the filing of the

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22 SBC-Oklahoma, 8 C.R. at 218.

BellSouth Application. However, the record shows that requests were made prior to the 90-day window period. And it confirms the difficulties placed in the paths of potential competitors seeking access and interconnection by BellSouth.

Sprint's Petition to Deny establishes BellSouth's intransigence. According to Sprint, "BellSouth continues to refuse to offer and provide critical interconnection arrangements in South Carolina. The arrangements it has deemed to offer often cannot support competitive entry on a viable commercial scale."[23] Sprint notes further that BellSouth has refused to offer contract service arrangements at the wholesale discount, failed to offer stable prices for Operational Support Services and declined to provide permanent prices that are cost-based. One result of this strategy is that the price BellSouth offers for two-wire loops, in interconnection agreements and in its Statement of Generally Available Terms ("SGAT"), is higher than the BOC's retail price.[24] Sprint quotes ACSI's vice president for regulatory affairs, testifying in the SCPSC's Section 271 proceeding: "Obviously, since the BellSouth unbundled price to ACSI exceeds BellSouth's residential retail prices, ACSI -- or any other competitive carrier -- has no prospect of providing service in the residential market at competitive prices."[25]

According to AT&T, BellSouth resisted the company's attempts to enter the South Carolina local market using combinations of UNEs "at every turn."[26] BellSouth even resisted in

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23 Sprint Petition to Deny at 38.

24 Id. at 39.

25 Id. at 39-40 (citation omitted).

26 Id. at 51.

the face of FCC rules that were not stayed and were in effect during the entire relevant time period. But for the obstacles put in its path by BellSouth, AT&T asserts, it would have been able to offer competing services in South Carolina.[27]

The record clearly demonstrates that BellSouth is primarily -- if not exclusively -- responsible for the limited degree of competition that it faces. If the applicant had accommodated competition, instead of resisting it "at every turn," it might be in a position to submit a serious Track A application. But it chose not to do so. If, contrary to all of the record evidence, the Commission finds that BellSouth has not received qualifying requests and thus is eligible under Track B, it should hold that the obstacles BellSouth has placed in the path of potential competitors disqualifies it under the competitive checklist and/or public interest tests of Section 271.

But the Commission need not reach those conclusions because the record shows that BellSouth had received qualifying requests prior to June 30, 1997. ACSI represents that it entered into a region-wide interconnection agreement with BellSouth on July 25, 1996, and that it is interested in providing service to residential as well as business customers.[28] Similarly,

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27 AT&T Comments at 51. MCI reaches a similar conclusion. It reports:

> BellSouth has not fulfilled its obligations to provide adequate OSS, has not adopted or even offered to meet critical performance standards needed to establish checklist compliance, has not established working, enforceable procedures for providing collocation in a timely fashion, has not shown that there are cost-based prices for interconnection and access to unbundled network elements, and has failed in numerous other respects to comply with the Act's requirements. The progress of CLECs in South Carolina is eminently reasonable in the absence of these minimum conditions.

MCI Comments at 7.

28 Opposition of ACSI at 13-15.

AT&T reports that on June 10, 1996 it provided BellSouth with written confirmation of its request for access and interconnection specific to South Carolina.[29] The record also reflects that ITC DeltaCom obtained an interconnection agreement with BellSouth in South Carolina on March 12, 1997, which was approved by the SCPSC on April 3, 1997.[30] In light of these agreements, BellSouth cannot claim that it has not received a qualifying request under the statute.

C. The SCPSC's Recommendation Is Not Owed Deference

BellSouth asks the Commission to place substantial weight upon the decision of the SCPSC to support the BOC's case for grant of its Application. It focuses upon the SCPSC's conclusion that "'none of [BellSouth's] potential competitors are taking any reasonable steps towards implementing any business plans for facilities-based local competition for business and residential customers in South Carolina.'"[31] But, putting aside the fact that there is no "reasonable steps" requirement in the statute, as noted above, the record demonstrates the inaccuracy of the SCPSC's conclusion, and deference is not owed to this conclusion in any event.

First, there is no "reasonable steps" requirement in the statute, so even if the SCPSC conclusion were correct, it is irrelevant. To pursue Track B, the statute requires that a BOC not receive a qualifying request, or, if it has received one, that the potential provider has either failed

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29 AT&T Comments at 50.

30 ALTS Comments at 7 and Attachment C at ¶21 (Affidavit of Steven D. Moses on behalf of ITC DeltaCom, Inc.)

31 Application at 12, citing South Carolina Public Service Commission Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 97-101-C Order No. 97-640, Jul. 31, 1997, at 19 ("Compliance Order").

to negotiate or failed unreasonably to comply with an implementation schedule in the interconnection agreement it has with the BOC.[32] The only "reasonable steps" a potential provider must take are the "steps" laid out in an implementation schedule set forth in an interconnection agreement. Neither BellSouth nor the SCPSC claimed that such an implementation schedule is included in any CLEC interconnection agreement.

Second, as described in the previous sections, a number of CLECs including AT&T, Sprint, ACSI, and ITC DeltaCom, have taken every "reasonable step" to pursue competition in South Carolina but have been stymied by BellSouth at virtually every turn. Under these circumstances, even if there were a "reasonable steps" test, BellSouth surely should not be able to benefit from the product of its own intransigence, and, in any event, the steps those CLECs took must be deemed "reasonable" under the circumstances.

Finally, the SCPSC's conclusion is owed little deference in any event. Sprint identifies three compelling reasons why the Commission should reach its own conclusions. First, the PSC did not engage in the "comprehensive fact-gathering" that is needed to develop the type of record essential to support a state recommendation to grant Section 271 approval.[33] Second, the PSC's conclusion that "no 'facilities-based' competitive entry was likely"[34] was premised upon a definition of facilities-based that is inconsistent with the subsequently-issued decision in Ameritech-Michigan. The Commission found in that case that a CLEC could qualify as

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32 47 U.S.C. §271(c)(1)(B)(i).

33 Sprint Petition to Deny at 41.

34 Id. at 41-42.

predominantly facilities-based by offering unbundled network elements obtained from an ILEC. The SCPSC decision does not appear to reflect the Commission's current thinking in this regard. And third, the SCPSC refuses to recognize the Act's preference for Track A, and use of Track B only as a "fallback."[35]

The Act invests in the Commission the responsibility to independently evaluate requests by BOCs to offer interLATA services. The opinion of a state commission can critically assist the Commission's evaluation, where it is backed by a detailed record of CLEC actions and non-actions to make qualifying requests for interconnection and access. In this proceeding, the SCPSC has not provided that sort of record. Indeed, as pointed out by a number of commenters, the SCPSC appears to have adopted verbatim the proposed findings and conclusions submitted by BellSouth, a further reason for declining to afford deference to that decision.[36] As a result, the recommendation of the SCPSC is not entitled to deference. BellSouth's Application must be dismissed because the company is not eligible to proceed under Track B.

II. BELLSOUTH HAS NOT MET THE ACT'S CHECKLIST REQUIREMENTS

BellSouth has not met the threshold requirement that it be eligible to proceed under Track B; the Commission should dismiss its Application on that ground alone. In addition, as numerous commenters have observed, BellSouth's Statement of Generally Acceptable Terms ("SGAT") fails to meet the requirements of the competitive checklist which must be satisfied whether an applicant proceeds under Track A or Track B. Under Track A, a BOC must

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35 Id. at 42-43.

36 See e.g., MCI Comments at 10.

"provide" all of the checklist items; under Track B, the checklist services must be offered.[37] Because the record in this proceeding conclusively demonstrates BellSouth's failure to satisfy the checklist, we will only briefly address this point.

The parties to this proceeding -- many, if not most, of whom are CLECs seeking to provide competitive service in BellSouth's region in general, and in South Carolina in particular -- have amply demonstrated that BellSouth has failed to satisfy numerous checklist items. These deficiencies include:

- A failure to provide Operational Support Systems in accordance with Commission Rules;[38]
- A failure to provide cost-based, geographically deaveraged prices;[39] and
- A failure to provide prices that are final, as opposed to interim.[40]

One checklist deficiency is particularly important to bring to the Commission's attention because it reflects a pattern among incumbent local exchange carriers ("ILECs") to severely deter CLEC competition as well as the development of Internet services: A number of ILECs, including BellSouth, refuse to compensate CLECs for terminating calls to Internet Service Providers ("ISPs"). In the context of this proceeding, BellSouth's refusal violates the requirement that a BOC's Statement of Generally Available Terms include "reciprocal

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37 47 U.S.C. §271(c)(2).

38 WorldCom Comments at 4-9; Hyperion and KMC Telecom Comments at 5-10; Sprint Petition to Deny at 9-18; MCI Comments at 10-38; ALTS Comments at 23-24; ACSI Opposition at 46-48; AT&T Comments at 23-37.

39 Sprint Petition to Deny at 18-21; MCI Comments at 38-44; ALTS Comments at 20, 22; AT&T Comments at 38-42.

40 Sprint Petition to Deny at 23-27; ALTS Comments at 21; ACSI Opposition at 26-27.

compensation arrangements in accordance with the requirements of Section 252(d)(2)."[41] Section 252(d)(2), in turn, requires LECs to establish reciprocal compensation arrangements to provide for the recovery "by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[42]

The BellSouth Application confirms that the BOC will not pay terminating access for calls made to CLEC customers who are ISPs.[43] The BOC asserts, as have many of its brethren, that it "does not pay or bill local interconnection charges for traffic termination for enhanced service providers because this traffic is jurisdictionally interstate."[44] As NCTA and others have explained in detail to the Commission, the BOC reading of the law is wrong as a matter of law and must be rejected, in any event, as a matter of sound public policy.

The issue of the appropriate treatment of calls to ISPs for purposes of reciprocal compensation obligations is currently pending before the Commission as a result of a petition for clarification filed by ALTS on June 20, 1997.[45] As NCTA said in that proceeding, while the "traffic" which runs from the end user consumer to the ultimate Internet site may be

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41 47 U.S.C. §271(c)(2)(B)(xiii).

42 47 U.S.C. §252(d)(2) (emphasis added).

43 Application at 52.

44 Id. (Emphasis added).

45 See "Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," Public Notice, CCB/CPD 97-30, released July 2, 1997.

jurisdictionally "interstate," it is the "call" from the individual end user to the ISP point of presence which should determine whether that call is "local" for reciprocal compensation purposes. And, in most cases, such calls are generally in the same landline local calling area. The call placed to an ISP by an end user in the same local landline calling area "terminates" when it is answered by the ISP in the same local calling area and should be subject to the same reciprocal compensation obligations as are other local calls.[46]

BellSouth's refusal to pay reciprocal compensation for one category of calls -- calls to ISPs -- is a clear violation of the competitive checklist. As such, even if its Application otherwise met all of the relevant tests (which it does not), it cannot be granted unless and until BellSouth agrees to pay reciprocal compensation to CLECs for calls to the latters' ISP customers or the Commission holds in the context of the fully-briefed ALTS Petition for Clarification that such compensation is not required.[47] For these reasons, and those presented by a number of other commenters,[48] the BellSouth SGAT's reciprocal compensation terms do not satisfy the competitive checklist.

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46 See Reply Comments of the National Cable Television Association, CCB/CPD 97-30, filed July 31, 1997 (attached hereto).

47 Indeed, even if the reciprocal compensation checklist provision is held not to require reciprocal compensation for calls terminating at ISPs, BellSouth's failure to provide such compensation should be deemed not to be in the public interest under that §271 criterion. If the BOCs' position were to be adopted, such a conclusion could stunt the growth of Internet services which no longer would have viable options among providers of local service, contrary to the pro-competitive goals of the 1996 Act.

48 See Hyperion and KMC Telecom Comments at 2-5; South Carolina Cable Television Association Comments at 8-14; WorldCom Comments at 9-15; ALTS Comments at 30-34.

III. BELLSOUTH HAS NOT DEMONSTRATED THAT IT WILL COMPLY WITH THE REQUIREMENTS OF SECTION 272

The Commission cannot approve BellSouth's request to enter the in-region interLATA services market unless it determines that BellSouth will provide such services in accordance with the requirements of Section 272 which calls for separate affiliate and non-discrimination safeguards for the BOC's long distance affiliate.[49] As the comments of BellSouth's potential long distance competitors in South Carolina demonstrate, BellSouth has failed to satisfy the Section 272 requirements called for in conjunction with a Section 271 application. In this regard, AT&T, MCI and Sprint all show that BellSouth's application and its accompanying affidavits come up short in providing assurances that BellSouth will comply with Section 272.[50] In light of these objections, and the record evidence supporting them, the Commission cannot grant the BellSouth Application.

IV. BELLSOUTH'S APPLICATION DOES NOT SATISFY THE PUBLIC INTEREST TEST

BellSouth's Application also fails to satisfy the public interest requirements of Section 271. Section 271(d)(3)(C) requires that, in order to approve a BOC's Section 271 application, the Commission must find that "the requested authorization is consistent with the public interest,

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49 47 U.S.C. §271(d)(3) See also Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (rel. Dec. 24, 1996) ("Non-Accounting Safeguards Order") at ¶3 ("The 1996 Act conditions the BOCs' entry into in-region interLATA services on their compliance with certain provisions of §271. Under §271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by §272 and the rules adopted herein") (emphasis added).

50 See AT&T Comments at 53-59; MCI Comments at 69-77; Sprint Petition to Deny at 43-44;

convenience and necessity."[51] For a number of reasons, grant of BellSouth's Application would not be in the public interest.

At the outset, the Commission must reject BellSouth's attempt to limit the question of whether its application satisfies the public interest standard to "the effect on competition of Bell company entry into the intraLATA market."[52] Such a narrow construction of the public interest test finds no support in the statute, legislative history or Commission precedent. Instead, the Commission should apply the construction of the public interest test which it set forth in the Ameritech-Michigan decision.

In that case, the Commission specifically rejected the suggestion that, under the Act, the public interest evaluation is narrowly circumscribed. It decided "that Section 271 grants the Commission broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest."[53] In particular, it explicitly "reject[ed] the view that [its] responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market"[54] -- the position BellSouth takes with respect to its Application. Since neither BellSouth nor its supporters have advanced any persuasive reason for adopting the BOC's simplistic view of Section 271's public interest test and revisiting the Commission's Ameritech-Michigan approach, BellSouth's opening gambit on this issue must be rejected.

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51 47 U.S.C. §271(d)(3)(C).

52 Application at 70.

53 Ameritech-Michigan at ¶383.

54 Id. at ¶386.

And, it is small wonder why BellSouth seeks to limit the Commission's public interest analysis. The record details why the BOC fails the public interest test in several respects. First, BellSouth has not shown that "it is ready, willing, and able to provide each type of interconnection arrangement on a commercial scale throughout the state if requested."[55] The comments of AT&T, ACSI and others, described above, demonstrate that BellSouth's record is one of resistance, not accommodation. And, as we have observed above, even if BellSouth's failure to provide reciprocal compensation for calls to CLEC ISP customers is not required by the checklist, the public interest in encouraging advanced services is not served by the BellSouth refusal to provide reciprocal compensation for such calls.

Granting BellSouth's request at this juncture also does not serve the public interest because it would imperil the prospects for meaningful and lasting local competition in South Carolina. Congress intended that the opportunity to provide in-region interLATA service would induce the BOCs to open their local exchange monopolies to facilities-based competitors in accordance with the competitive checklist embodied in Section 271.[56] The Commission itself has recognized that the BOCs "have no economic incentive, independent of the incentives set

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55 Ameritech-Michigan at ¶392.

56 In discussing the Senate version of §271, which was adopted by the Conference Committee, Senator Kerrey noted that "[t]he way to overcome this ability of the RBOC to thwart the open local markets is to give them a positive incentive to cooperate in the development of competition." See, e.g., 141 Cong. Rec. S8139 (daily ed. June 12, 1995) (statement of Sen. Kerrey). Likewise, during House consideration of the Conference Report, Rep. Hastert stated that "[f]air competition means local telephone companies will not be able to provide long distance service in the region where they have held a monopoly until several conditions have been met to break that monopoly." 142 Cong Rec. H1152 (daily ed. Feb. 1, 1996) statement of Rep. Hastert) (emphasis added).

forth in Sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LECs network and services."[57]

If authorized prematurely to provide in-region interLATA services, BellSouth would have a substantially reduced incentive to negotiate and implement access and interconnection agreements that provide new entrants with a meaningful opportunity to compete. By making BOC entry into long distance contingent upon "full" implementation of interconnection agreements with new entrants or upon the approval of a Statement of Generally Available Terms and Conditions meeting the competitive checklist, Congress sought to ensure that the BOCs would carry out their duties under such agreements in a timely and useful manner. That incentive, however, disappears once the BOCs are permitted to enter the long distance market.

Absent countervailing incentives, BOCs will vigorously resist efforts to open their markets to competition not only via litigation, but also through negotiation delays, protracted provisioning of services, and other stalling tactics.[58] The importance of the local competition incentive embodied in Section 271 is vividly illustrated by the fact that two ILECs already authorized to provide long distance service, GTE and SNET, have led the effort to invalidate the local competition rules promulgated by the FCC under Section 251 of the Act.[59] Lacking the

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57 Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Aug. 8, 1996) ("Local Competition Order") at ¶55.

58 See, e.g., United States v. American Tel. & Tel. Co., 524 F. Supp. 1336, 1355-56 (D.D.C. 1981); United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 187-88, 195, 223 (D.D.C. 1982); MCI Communications v. American Tel. & Tel. Co., 708 F.2d 1081, 1132-33, 1139-40, 1158-5559 (7th Cir. 1983); Local Competition Order at ¶¶141, 145-147.

59 See "Telecom Law Faces Challenge in Court, "Wall St. J., Aug. 29, 1996, at A3.

incentive of access to a new revenue stream, GTE and SNET have aggressively sought to preserve their local exchange monopolies.[60] Once the long distance incentive is removed, the GTE/SNET experience illustrates that BellSouth can easily find ways to undermine rules that require it to negotiate and implement interconnection agreements with local service competitors seeking to offer meaningful choice to consumers. The conduct of GTE and SNET amply demonstrates that prematurely granting BellSouth's Application would halt the progress toward local competition in South Carolina. Under these circumstances, grant of the BellSouth Application cannot be found to be in the public interest.

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60 GTE, the largest local exchange company in the country, has sought to skirt obligations under Section 251 of the Act by asking state regulators for relief from such requirements pursuant to an exemption that Congress designed for small and rural telcos. See "Virginia Rejects GTE's Request for Rural Status," Multichannel News, Nov. 11, 1996, at 34 (quoting spokesman for State commission as saying that granting GTE's request "really would have slowed down the entrance of competition into GTE's service area"); "Why Phone Rivals Can't Get Into Some Towns," Wall St. J., Aug. 19, 1996, at B1 (noting GTE "plans to invoke a little-known provision in the new law that exempts rural phone companies and small operators from a raft of rules that would ease rivals' entry into their markets"). SNET, which dominates that local market throughout the State of Connecticut, also has sought to invoke the small carrier exemption in order to avoid duties under Section 251. See id. at B3.